

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LINDA A. COWAN,

Plaintiff,

v.

DECISION AND ORDER

00-CV-315S

PAUL O'NEILL, Secretary,
Dep't of the Treasury Agency, et al.,

Defendant.

1. Presently before this Court is Plaintiff's Motion to Appeal this Court's July 26, 2005 Decision denying her prior Motions to Reopen her case and to Recuse Judge Skretny. For the following reasons, Plaintiff's Motion is denied.

2. Plaintiff commenced this action by filing a *pro se* Complaint on April 17, 2000, alleging sexual harassment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. Therein, Plaintiff alleged that she was unlawfully terminated from her position as a Taxpayer Service Representative by her employer, the Internal Revenue Service.

3. On February 7, 2001, Plaintiff, who had retained counsel, filed an Amended Complaint. Defendant Paul O'Neill, Secretary of the Department of Treasury Agency, moved to dismiss the Amended Complaint or in the alternative, for summary judgment on April 5, 2001.

4. A review of the official docket reveals that Plaintiff failed to file anything in opposition to Defendant O'Neill's Motion, despite an extension granted by this Court, or to appear for oral argument on July 11, 2001. Accordingly, Defendant moved to dismiss the case for failure to prosecute pursuant to Rule 41.2(b) of the Local Rules of Civil

Procedure, which this Court granted orally on July 11, 2001. Alternatively, by Order entered in July 20, 2001, this Court also granted Defendant's Motion for Summary Judgment, finding that Defendant had proffered legitimate non-discriminatory reasons for terminating Plaintiff, and noting that Plaintiff had failed to exhaust her administrative remedies with the Merit Systems Protection Board ("MSPB"). Accordingly, the Clerk of the Court entered Judgment against Plaintiff and closed this case on July 24, 2001.

5. Plaintiff filed a Motion to Set Aside Judgment on July 23, 2002, which this Court denied on April 11, 2003, after oral argument.

6. On October 9, 2001, and April 29, 2003, Plaintiff filed separate Notices of Appeal with the United States Court of Appeals for the Second Circuit. In separate Mandates entered on January 14, 2004, and July 26, 2004, the Second Circuit concluded that Plaintiff's "appeal lacks an arguable basis in fact or law and must be dismissed."

7. On June 8, 2005, Plaintiff filed Motions to Reopen her case and to Recuse Judge Skretny. Therein, she alleged that, contrary to Judge Skretny's Decision, she did in fact exhaust her administrative remedies with the MSPB. She contended that the Honorable H. Kenneth Schroeder, United States Magistrate Judge, indicated at a pretrial conference that she had a valid Title VII claim. Moreover, she argued that despite the validity of her claim, Judge Skretny exhibited bias towards her, denied her request for a court-appointed attorney and dismissed her Amended Complaint on false grounds.

8. Because the Second Circuit already concluded that Plaintiff had no legal or factual basis to appeal this Court's decision to dismiss her case for failure to prosecute, or in the alternative, to grant summary judgment in favor of Defendants, this Court determined that there was no basis to reinstate or reopen Plaintiff's case, and no pending case from which Judge Skretny could recuse himself. Accordingly, by Decision and Order signed on July 26, 2005, this Court denied Plaintiff's motions.

9. On August 4, 2005, Plaintiff filed the instant Motion to Appeal this Court's July 26, 2005 Decision and Order. This Court can only reiterate that the Second Circuit has already reviewed Plaintiff's appeal and found it without merit. As such, Plaintiff has no basis to appeal this Court's determination that her case should not be reopened, or its decision to deny her recusal request.

IT HEREBY IS ORDERED, that Plaintiff's Motion to Appeal (Docket No. 68) is DENIED.

SO ORDERED.

Dated: September 7, 2005
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge